

REMARKS

This is intended as a full and complete response to the Office Action dated July 30, 2010, having a shortened statutory period for response set to expire on November 1, 2010. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-20 are pending in the application. Claims 1-7 and 9-20 remain pending following entry of this response. Claims 1-2, 5, and 12-17 have been amended. Claim 8 has been cancelled. Applicants submit that the amendments do not introduce new matter.

Further, Applicant is not conceding in this application that those amended (or cancelled) claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the claimed subject matter. Applicant respectfully reserves the right to pursue these (pre-amended or cancelled claims) and other claims in one or more continuations and/or divisional patent applications.

Statement of Substance of Interview

On October 29, 2009, a telephonic interview was held between Bret McClay and Examiner Shahid R. Merchant. The parties discussed the cited references including *Serkin* and *Lele*. Claim 8 was discussed. During the interview, Applicant suggested that neither *Serkin*, nor *Lele*, teaches "establishing, by operation of an application program, an average order volume per book, by dividing a volume of orders by a number of books maintained for a security", as originally recited in claim 8. While no formal agreement could be reached at the time of the interview, the Examiner agreed to further consider Applicants position.

Claim Objections

Claim 12 is objected to because of informalities. Specifically, the Examiner makes the following statement:

Claim 12 objected to because of the following informalities: computer-readable medium. Applicant is advised to recite a "tangible" or "non-

transitory" computer readable medium in the preamble of the claim.
Appropriate correction is required.

Office Action, p. 2. While applicants are unsure just what informality the Examiner is referring to, Applicants have amended claims 12-16 to be directed to a "computer readable storage medium" to prevent a potential statutory subject matter issue under 35 U.S.C. § 101. If the Examiner believes that any informality remains in claims 12-16, Applicants request further clarification from the Examiner. Otherwise, Applicants respectfully request that this objection claim 12 be withdrawn.

Claim Rejections - 35 U.S.C. § 103

Claims 1-20 are rejected under 35 U.S.C. 103(a), as being unpatentable over *Serkin et al.*, (US 2003/0229567, hereinafter *Serkin*), in view of *Lele*, (US 7,181,524).

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2141. Establishing a *prima facie* case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The factual inquiries are as follows:

- A. determining the scope and content of the prior art;
- B. ascertaining the differences between the claimed invention and the prior art;
- C. resolving the level of ordinary skill in the art; and
- D. considering any objective indicia of nonobviousness.

Once the *Graham* factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.

Claim 1 recites (i) establishing, by operation of an application program, an average order volume per book, by dividing a volume of orders by a number of books maintained for a security, and (ii) varying the number of books maintained for the security based on the average order volume per book. Support for these limitations can be found at paragraph [0025] of the present specification (among others). No combination of the cited references teaches or suggests these limitations.

In the Office Action, the Examiner argues that paragraphs [0031] and [0045-0047] of *Serkin* teach or suggest the above limitations now recited in claim 1. However,

Careful review of these paragraphs—along with the specification, figures and claims of *Serkin*—indicates that the reference does not, in any way, teach or suggest these specific limitations. For example, paragraph [0031] only broadly discusses that workloads may be balanced by “assigning certain securities to certain securities processors,” but fails to specify anything regarding how this load balancing technique is executed. Further, paragraphs [0045]-[0047] merely teach that a network administrator may scale the number of “securities processors” to accommodate higher or lower trade volumes. Like paragraph [0035], the technique of a human being assigned to add or remove processors can in no way be equated to the specific limitations of (by operation of an application program) establishing an average order volume per book by dividing the volume of orders by a number of books maintained for a security. For these reasons, *Serkin* fails to teach or suggest the limitations of claim 1 recited above.

Turning to *Lele*, the reference discloses a specific technique of load balancing that involves assigning estimated load values to actions. However, *Lele*, like *Serkin*, simply fails to teach or suggest the specific limitations of establishing an average order volume per book by dividing the volume of orders by a number of books maintained for a security, or any other technique equivalent thereto. Accordingly, *Lele* fails to cure the deficiencies of *Serkin*.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

Conclusion

Having addressed all issues set out in the office action, Applicant respectfully submits that the claims are in condition for allowance and respectfully requests that the claims be allowed.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

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